

979-80/52

[H.A.S.C. No. 96-52]

FULL COMMITTEE CONSIDERATION

OF

H.R. 7552

TO CLARIFY THE AUTHORITY OF THE ARMED FORCES TO CONDUCT SAFETY INVESTIGATIONS OF ACCIDENTS INVOLVING AIRCRAFT OF THE ARMED FORCES AND TO PROTECT FROM PUBLIC DISCLOSURE CERTAIN PARTS OF REPORTS OF SUCH INVESTIGATIONS

H.R. 8188

TO REVISE THE LAWS GOVERNING THE UNITED STATES COURT OF MILITARY APPEALS TO PROVIDE FOR REVIEW OF DECISIONS OF SUCH COURT BY THE SUPREME COURT

H.R. 8189

TO AUTHORIZE THE PROVISION OF FULL DENTAL CARE BENEFITS TO DEPENDENTS OF MEMBERS OF THE UNIFORMED SERVICES ON ACTIVE DUTY UNDER THE CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES AND IN FACILITIES OF THE UNIFORMED SERVICES

COMMITTEE ON ARMED SERVICES HOUSE OF REPRESENTATIVES NINETY-SIXTH CONGRESS

SECOND SESSION

SEPTEMBER 25, 1980



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NINETY-SIXTH CONGRESS, SECOND SESSION

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(11)



H.R. 7552

HOUSE OF REPRESENTATIVES
COMMITTEE ON ARMS AND AMMUNITION

Washington, D.C., Thursday, September 24, 1959

The committee met, pursuant to notice, at 10 a.m. in room 2118, Rayburn House Office Building, Hon. Melvin Price (chairman of the committee) presiding.

The CHAIRMAN. The committee will be in order.

This morning, the first order of business is a report from the Subcommittee on Procurement and Military and Nuclear Systems, and I happen to be the chairman of that particular subcommittee, so I submit a report recommending the approval of H.R. 7552.

Any questions on that? If not, without objection the report is agreed to.

[H.R. 7552 is as follows:]

(1)

A BILL

$$p(\mathbf{C}) = \prod_{i=1}^n p(\mathbf{C}_i) = \prod_{i=1}^n \prod_{j=1}^m p(C_{ij})$$

of such investigations.

IN THE HOUSE OF REPRESENTATIVES

JUNE 11, 1989

Mr. PRICE (for himself and Mr. BOB WILSON) (by request) introduced the following bill; which was referred to the Committee on Armed Services:

A BILL

To amend title 10, United States Code, to clarify the authority of the Armed Forces to conduct safety investigations of accidents involving aircraft of the Armed Forces and to protect from public disclosure certain parts of reports of such investigations.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 *That (a) part 1 of subtitle A of title 18, United States Code,*
4 *is amended by adding at the end thereof the following new*
5 *chapter:*

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Investigation reports: limitation on use

"§ 271. Investigation reports: limitation on use

"(a) The Secretary concerned may conduct a safety investigation of any accident involving an aircraft under the jurisdiction of the Secretary. A safety investigation is an investigation conducted solely to determine the cause of an aircraft accident and to obtain information which may prevent the occurrence of similar accidents.

"(b) No part described in subsection (c) of any record or report of a safety investigation may—

"(1) be released outside of the armed force concerned, unless expressly authorized by the Secretary concerned to be released for safety purposes;

"(2) be subject to discovery in any judicial or administrative proceeding; or

"(3) be used as evidence, or to obtain evidence, in any disciplinary action or suit or other judicial or administrative proceeding.

"(c) Subsection (b) applies to any part of a record or report of a safety investigation relating to—

"(1) the deliberative portions of an investigation, including any discussion, analysis, opinion, conclusion, finding, or recommendation;

(3) statements of information obtained under an express provision of confidentiality from a witness or manufacturer; and

"(3) life science reports.

"(d) This section does not limit or alter the authority of the National Transportation Safety Board under section 702(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1442(a)), section 304(a)(1)(A) of the Independent Safety Board Act of 1974 (49 U.S.C. 1903(a)(1)(A)), and section 6(d) of the Department of Transportation Act (49 U.S.C. 1655(d)).

"(e) The Secretary concerned shall prescribe regulations to carry out this section."

(b) The table of chapters at the beginning of subtitle A, and the table of chapters at the beginning of part I of subtitle A, of title 18, United States Code, are each amended by adding the following new item after the item relating to chapter 14:

"18. ALIEN ACTS 117."

SEC. 6. Section 941(b) of title 18, United States Code, as added by the first section of this Act, shall apply to safety investigations of accidents occurring before, on, or after the date of the enactment of this Act.

REPORT OF HON. MELVIN PRICE, A REPRESENTATIVE FROM ILLINOIS, CHAIRMAN, HOUSE COMMITTEE ON ARMED SERVICES, CHAIRMAN, PROCUREMENT AND MILITARY NUCLEAR SYSTEMS SUBCOMMITTEE

The CHAIRMAN. On behalf of the Subcommittee on Procurement and Military Nuclear Systems, I am reporting the bill H.R. 7552 which would amend title 10 of the United States Code. The bill would add a new chapter 19 to clarify the authority of the Armed Forces to conduct safety investigations of accidents involving aircraft and to restrict the use of certain parts of aircraft safety investigation reports. H.R. 7552 was approved unanimously by the Subcommittee on Procurement and Military Nuclear Systems on September 23, 1980. A copy of the bill and analysis is before each member.

This legislation was requested by the Department of Defense. The original request was introduced by Mr. Bob Wilson and myself on January 30, 1980, as H.R. 6362. The subcommittee held a hearing on H.R. 6362 on February 7, 1980. The bill H.R. 7552 is a clean bill, introduced by Mr. Bob Wilson and myself on June 11, 1980, and is supported by the Department of Defense.

The bill is very simple. It would provide statutory authority for the Secretary of each military service to conduct a safety investigation of any accident involving an aircraft in his particular service. The bill defines a safety investigation as an investigation conducted solely to determine the cause of the aircraft accident and to obtain information which may prevent the occurrence of a similar accident. I might point out that aircraft safety investigations have been conducted by the military services under regulations issued by each service for many years. The bill does not change that procedure in any way.

Aircraft safety investigations are conducted for the purpose of determining the cause of a particular accident and to, hopefully, prevent similar accidents from the same causes in the future. These investigations are not conducted for the purpose of affixing blame or liability for the accident, nor are they conducted for the purpose of forming a basis for punitive action against any person. Other investigations are conducted for those purposes and are described by the services as legal investigations.

The bill contains provisions which protect certain reports and records incidental to aircraft safety investigations from public disclosure unless expressly authorized by the Secretary of the service concerned for safety purposes. Certain parts of safety reports are protected from discovery in judicial or administrative proceedings. The bill also protects certain parts of safety investigations and reports from use as evidence, or to obtain evidence, in any disciplinary action, lawsuit or other judicial or administrative proceeding.

I might add at this point that these parts of aircraft safety accidents have been protected from public disclosure for many years under the principle of "executive privilege." Safety investigations often require information which can be obtained only under an express promise of confidentiality. These investigations also often include information of the most private nature which, if

disclosed, would violate the right of privacy of individuals concerned.

The administration and the Department of Defense believe that the interest of saving lives and protecting expensive national defense resources through accident prevention warrants a congressional policy determination that military aircraft accident safety reports be protected. This bill would provide such a statement of policy.

While the bill does not amend the Freedom of Information Act, the bill creates an exception to that act and places aircraft safety reports under exemption (b)(3) of the Freedom of Information Act. The Freedom of Information Act provides an exception to the release of information where that release is otherwise prohibited by statute.

In conclusion, I would add that there is no intent in this legislation to impair the present rights of any potential litigant. There are ample other avenues to obtain evidence for legal purposes. Accidents involving injuries, property damage, or fatalities are investigated through so-called legal investigations for the purpose of determining the Government's liability; to determine the line of duty or misconduct status of military personnel involved; to determine the line of duty or misconduct status of military personnel involved; to determine whether there is a basis for punitive or other administrative actions; and for other purposes. These investigations are available to potential litigants. In addition, the same witnesses and other evidence are available under the subpoena power of the courts. Evidence is also available under the normal discovery procedures of the courts. In legal investigations and the other legal procedures available to litigants, no promise of confidentiality is involved and the legal rights of individuals to counsel and against self-incrimination are fully protected. This is not the case with aircraft accident safety investigations.

I believe that this bill and the purposes that it serves are worthy and recommend its approval.

H.R. 7552—SECTIONAL ANALYSIS

"To amend title 10, United States Code, to clarify the authority of the Armed Forces to conduct safety investigations of accidents involving aircraft of the Armed Forces and to protect from public disclosure certain parts of reports of such investigations."

The first section of the bill adds a new chapter 19 to part I of subtitle A of title 10, United States Code. Chapter 19 would contain only section 371.

Section 371(a) gives statutory recognition to the authority of the Secretary of a military department to conduct a safety investigation of any accident involving an aircraft under that Secretary's jurisdiction. A safety investigation is defined as one conducted solely to determine accident causes and to obtain information in order to prevent similar accidents.

Section 371(b) ratifies the privileged character of certain parts (described in section 371(c)) of the record or report of a safety investigation. It denies availability of the privileged parts to anyone outside the armed force which is conducting the investigating unless the Secretary expressly authorizes release for safety

purposes. It also precludes the privileged parts from being subject to discovery in any judicial or administrative proceeding, and from being used as evidence, or to obtain evidence, in any disciplinary action, suit, or other judicial or administrative proceeding.

Section 371(c) describes those parts of the record or report of a safety investigation which are privileged. All aspects of the deliberative portions of the investigation are privileged. This includes, but is not limited to, any discussion, analysis, opinion, conclusion, finding and recommendation. The subsection also protects from disclosure statements or information obtained directly or indirectly from a witness or manufacturer under an express promise of confidentiality. Finally, life-science reports are protected. These include the entire spectrum of reports pertaining to human factors.

Section 371(d) insures that nothing in this act shall be construed to limit or alter the authority of the National Transportation Safety Board insofar as the investigative powers of that agency stem from the named statutes.

Section 2 describes the act's applicability. It mandates that the protective provisions of the act (section 371(b)) shall apply to safety investigations of accidents that occurred before enactment, upon enactment, or subsequent to enactment.

This bill is intended to leave no doubt that the congressional objective is to promote safety in flight. It is designed to preempt the field, including the previously enacted Freedom of Information Act.

The CHAIRMAN. The Chair now recognizes Mr. White.

Mr. White.

REPORT OF HON. RICHARD C. WHITE, A REPRESENTATIVE FROM TEXAS, CHAIRMAN, MILITARY PERSONNEL SUBCOMMITTEE

Mr. WHITE. Mr. Chairman, the Military Personnel Subcommittee has also reported H.R. 8188, a bill to revise the laws governing the U.S. Court of Military Appeals and to provide for a review of the decisions of that court by the Supreme Court and for other purposes.

The legislation, which is an administration proposal, is specifically intended to improve the appellate process in the military court-martial system by enhancing the stature of the Court of Military Appeals.

The principal provisions of the bill are:

To clarify the independent status of the court by eliminating its current tie to the Department of Defense for administrative matters;

To increase the number of judges from three to five so that retirements, absences, illnesses, or resignations would not impair the ability of the court to function;

To authorize Supreme Court review of Court of Military Appeals cases by discretionary writs of certiorari; and

To provide full 15-year terms for each appointee.

The subcommittee has amended the original administration proposal. Several of the subcommittee changes are technical in nature. The substantive changes are to:

Require that not more than three judges of the court may be appointed from the same political party—continuing a similar provision in the law today;

Provide for notification to the appellate counsel of the accused, as well as the accused himself, before the time for appeal to the Court of Military Appeals begins to run; and

Include the judges of the court in the financial disclosure provisions of the Ethics in Government Act of 1978.

Mr. Chairman, the cost of the bill is estimated to be approximately \$300,000 annually.

The bill contains important improvements in the court structure and will improve the stability of the military justice system which is so essential to the state of discipline in the Armed Forces.

Mr. Chairman, I urge the committee to favorably report H.R. 8188.

[H.R. 8188 is as follows:]

96TH CONGRESS
2D SESSION

H. R. 8188

To amend chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), to revise the laws governing the United States Court of Military Appeals, to provide for review of decisions of such court by the Supreme Court, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 24, 1980

Mr. WHITE (for himself, Mrs. HOLT, Mr. PRICE, Mr. NEDZI, Mr. WON PAT, and Mr. KASTENMEIER) introduced the following bill; which was referred to the Committee on Armed Services

A BILL

To amend chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), to revise the laws governing the United States Court of Military Appeals, to provide for review of decisions of such court by the Supreme Court, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 SECTION 1. SHORT TITLE; REFERENCES TO UNIFORM CODE
4 OF MILITARY JUSTICE.

5 (a) SHORT TITLE.—This Act may be cited as the
6 "Court of Military Appeals Act of 1990".

1 (b) REFERENCES TO UNIFORM CODE OF MILITARY
 2 JUSTICE.—Whenever in this Act (except in sections 3(c),
 3 4(a), and 4(b)(1)) an amendment or repeal is expressed in
 4 terms of an amendment to, or repeal of, a section or other
 5 provision, the reference shall be considered to be made to a
 6 section or other provision of chapter 47 of title 10, United
 7 States Code (the Uniform Code of Military Justice).

8 **SEC. 2. JURISDICTION OF THE COURTS OF MILITARY REVIEW**
 9 **AND OF THE COURT OF MILITARY APPEALS.**

10 (a) REPEAL OF MANDATORY REVIEW BY COURTS OF
 11 MILITARY REVIEW OF SENTENCES AFFECTING GENERAL
 12 OR FLAG OFFICERS.—Section 866(b) (article 66(b)), relating
 13 to review by a Court of Military Review, is amended by
 14 striking out “affects a general or flag officer or”.

15 (b) REVISION OF JURISDICTION OF COURT OF MILI-
 16 TARY APPEALS.—

17 (1) IN GENERAL.—Section 867 (article 67), relat-
 18 ing to the Court of Military Appeals, is amended to
 19 read as follows:

20 “§ 867. Art. 67. Review by the Court of Military Appeals;
 21 applications to the Supreme Court for writs
 22 of certiorari

23 “(a) The United States Court of Military Appeals, in
 24 accordance with subchapter XII of this chapter, shall review
 25 the record in—

1 “(1) all cases in which the sentence, as affirmed
2 by a Court of Military Review, extends to death;

3 “(2) all cases reviewed by a Court of Military
4 Review which the Judge Advocate General orders sent
5 to the Court of Military Appeals for review; and

6 “(3) all cases reviewed by a Court of Military
7 Review in which, upon petition of the accused and on
8 good cause shown, the Court of Military Appeals has
9 granted a review.

10 “(b)(1) Decisions of the Court of Military Appeals are
11 subject to review by the Supreme Court by writ of certiorari
12 as provided in section 1259 of title 28. The Supreme Court
13 may not review any action of the Court of Military Appeals
14 in refusing to grant a petition for review.

15 “(2) The accused may petition the Supreme Court for a
16 writ of certiorari without prepayment of fees and costs or
17 security therefor and without filing the affidavit required by
18 section 1915(a) of title 28.”

19 (2) CLERICAL AMENDMENT.—The item relating
20 to such section in the table of sections at the beginning
21 of subchapter IX is amended to read as follows:

“867. 87. Review by the Court of Military Appeals; applications to the Supreme
Court for writs of certiorari.”

22 “(3) TECHNICAL AMENDMENT.—Section 869 (ar-
23 ticle 869), relating to review in the office of the Judge
24 Advocate General, is amended by striking out “section

1 867(b)(2) of this title (article 67(b)(2))" and inserting in
 2 lieu thereof "section 867(a)(2) of this title (article
 3 67(a)(2))".

4 (c) SAVINGS PROVISION.—The amendments made by
 5 this section with respect to automatic review of a case that
 6 affects a general or flag officer by a Court of Military Review
 7 or the Court of Military Appeals under sections 866 and 867
 8 of title 10, United State Code, shall not apply to any case
 9 that affects a general or flag officer in which, before the ef-
 10 fective date of this Act, charges have been preferred or other
 11 official action has been taken with a view toward prosecu-
 12 tion, and any such case shall be reviewed in a Court of Mili-
 13 tary Review and the Court of Military Appeals in the same
 14 manner and with the same effect as if such amendments had
 15 not been enacted.

16 SEC. 3. UNITED STATES COURT OF MILITARY APPEALS.

17 (a) REVISION OF LAWS GOVERNING COURT OF MILI-
 18 TARY APPEALS.—

19 (1) IN GENERAL.—Chapter 47 is amended by
 20 adding at the end thereof the following new sub-
 21 chapter:

22 "SUBCHAPTER XII—THE UNITED STATES COURT
 23 OF MILITARY APPEALS

"Sec.	Art.
"941.	141. Status.
"942.	142. Jurisdiction.
"943.	143. Judges.
"944.	144. Organization.

"945. 145. Procedure.
"946. 146. Administrative provisions.

1 "§941. Art. 141. Status

2 "There is established under article I of the Constitution
3 of the United States a court of record known as the United
4 States Court of Military Appeals. The members of the Court
5 of Military Appeals shall be the chief judge and the judges of
6 the Court of Military Appeals.

7 "§942. Art. 142. Jurisdiction

8 "The Court of Military Appeals shall have such jurisdic-
9 tion as is conferred by this chapter.

10 "§943. Art. 143. Judges

11 "(a) The Court of Military Appeals shall be composed of
12 five members.

13 "(b) Judges of the Court of Military Appeals shall be
14 appointed from civil life by the President, by and with the
15 advice and consent of the Senate, on the grounds of fitness to
16 perform the duties of the office. Not more than three of the
17 judges of the Court of Military Appeals may be appointed
18 from the same political party, and no person may be ap-
19 pointed to be a judge of the Court of Military Appeals unless
20 the person is a member of the bar of a Federal court or the
21 highest court of a State.

22 "(c) The term of office of any judge of the Court of
23 Military Appeals shall expire at the end of the 15-year period
24 beginning on the date after the judge takes office.

1 “(d) Judges of the Court of Military Appeals may be
2 removed from office by the President, after notice and an
3 opportunity for public hearing, for inefficiency, for neglect of
4 duty, for malfeasance in office, or for mental or physical dis-
5 ability, but for no other cause.

6 “(e)(1) Judges of the Court of Military Appeals shall
7 receive a salary at the same rate and in the same install-
8 ments as the judges of the United States courts of appeals.

9 “(2) Judges of the Court of Military Appeals shall re-
10 ceive travel expenses, and expenses actually incurred for sub-
11 sistence while traveling on duty away from the principal
12 office of the court, subject to the same limitations in amounts
13 as are applicable to the judges of the United States courts of
14 appeals.

15 “(f) If a judge of the Court of Military Appeals is tempo-
16 rarily unable to perform judicial duties because of illness or
17 another disability and the court informs the President that a
18 senior judge is not available for temporary service, the Presi-
19 dent may designate a judge of the United States Court of
20 Appeals for the District of Columbia Circuit to fill the office
21 for the period of disability.

22 “(g)(1) Any judge of the Court of Military Appeals who
23 is receiving retired pay may become a senior judge, may be
24 assigned offices in a Federal building, and may be provided
25 with a staff assistant, whose compensation may not exceed

1 the highest rate prescribed for grade GS-9 of the General
2 Schedule under section 5332 of title 5.

3 "(2) If a judge of the Court of Military Appeals is tem-
4 porarily unable to perform judicial duties because of illness or
5 another disability, or if there is a vacancy on the court, the
6 chief judge of the court may call upon a senior judge, with
7 the consent of the senior judge, to perform judicial duties
8 with the court for the duration of the disability or vacancy.
9 Any act, or failure to act, by an individual performing judicial
10 duties pursuant to this paragraph shall have the same force
11 and effect as if it were the act (or failure to act) of a judge of
12 the Court of Military Appeals, but such individual shall not
13 be counted as a judge of the Court of Military Appeals for the
14 purposes of section 943(a) (article 143(a)) of this title. Any
15 individual performing such judicial duties pursuant to this
16 paragraph shall, in lieu of retired pay, be paid the same com-
17 pensation as a judge of the court and shall be paid the same
18 allowances for travel and other expenses as a judge of the
19 court.

20 "§944. Art. 144. Organization

21 "(a) The Court of Military Appeals shall have a seal
22 which shall be judicially noticed.

23 "(b) The President shall from time to time designate one
24 of the judges of the Court of Military Appeals to be chief
25 judge of the court.

1 “(c) A majority of the judges of the Court of Military
2 Appeals shall constitute a quorum for the transaction of the
3 business of the court. A vacancy in the court shall not impair
4 the powers nor affect the duties of the court nor of the re-
5 maining judges of the court.

6 “(d) The principal office of the Court of Military Ap-
7 peals shall be in the District of Columbia.

8 “(e) Sessions of the Court of Military Appeals shall be
9 held in the District of Columbia, but the court may sit at any
10 other place where jurisdiction under this chapter is exercised
11 by the armed forces.

12 “(f) The chief judge of the Court of Military Appeals
13 shall have precedence and preside at any session that the
14 chief judge attends. The other judges shall have precedence
15 and preside according to the seniority of their original com-
16 missions. Judges whose commissions bear the same date
17 shall have precedence and shall preside according to seniority
18 in age.

19 “§945. Art. 145. Procedure

20 “(a) The rules of practice before the Court of Military
21 Appeals shall be prescribed by the court.

22 “(b) The accused has sixty days from—

23 “(1) the date on which the accused is notified of
24 the decision of a Court of Military Review, or

1 “(2) the date on which a copy of the decision of a
2 Court of Military Review, after being served on appel-
3 late counsel of record for the accused (if any), is depos-
4 ited with the United States Postal Service for delivery
5 to the accused by certified mail addressed to the latest
6 address listed for the accused in the accused's official
7 service record,
8 whichever is earlier, to petition the Court of Military Appeals
9 for review of such decision.

10 “(c)(1) In any case reviewed under section 867(a) of this
11 title (article 67(a)), the Court of Military Appeals may act
12 only with respect to the findings and sentence as approved by
13 the convening authority and as affirmed or set aside as incor-
14 rect in law by the Court of Military Review. In a case which
15 the Judge Advocate General orders sent to the Court of Mili-
16 tary Appeals, that action need be taken only with respect to
17 the issues raised by the Judge Advocate General. In a case
18 reviewed upon petition of the accused, that action need be
19 taken only with respect to issues specified in the grant of
20 review. The Court of Military Appeals shall take action
21 under this section only with respect to matters of law.

22 “(2) If the Court of Military Appeals sets aside the find-
23 ings and sentence, it may order a rehearing except where the
24 setting aside is based on lack of sufficient evidence in the
25 record to support the findings. If it sets aside the findings and

1 sentence and does not order a rehearing, it shall order that
2 the charges be dismissed.

3 "(3) After it has acted on a case, the Court of Military
4 Appeals may direct the Judge Advocate General to return
5 the record to the Court of Military Review for further review
6 in accordance with the decision of the court. Otherwise,
7 unless there is to be further action by the President or the
8 Secretary concerned, the Judge Advocate General shall in-
9 struct the convening authority to take action in accordance
10 with that decision. If the court has ordered a rehearing, but
11 the convening authority finds a rehearing impracticable, the
12 convening authority may dismiss the charges.

13 "8946. Art. 146. Administrative provisions

14 "(a) The Court of Military Appeals shall provide for the
15 publication of its reports in such form and manner as may be
16 best adapted for public information and use, and such author-
17 ized publication shall be competent evidence of the reports of
18 the Court of Military Appeals contained therein in all courts
19 of the United States and of the several States without any
20 further proof or authentication thereof.

21 "(b)(1) The Court of Military Appeals may appoint and
22 fix the basic pay of such employees as may be necessary to
23 enable it to execute efficiently the functions vested in it. Such
24 employees shall be appointed and such basic pay shall be
25 fixed in accordance with the provisions of title 5 governing

1 appointment and compensation in the civil service. Positions
2 in the court are excepted from the competitive service, and
3 the incumbents of such positions occupy positions in the ex-
4 cepted service.

5 "(2) Employees of the Court of Military Appeals shall
6 receive travel expenses and expenses for subsistence while
7 traveling on duty away from the principal office of the court
8 as provided in chapter 57 of title 5.

9 "(c) The Court of Military Appeals may make such ex-
10 penditures (including expenditures for personal services and
11 rent and for law books, books of reference, and periodicals) as
12 may be necessary to enable it to execute efficiently the func-
13 tions vested in it. All expenditures of the court shall be al-
14 lowed and paid, out of moneys appropriated for purposes of
15 the court, upon presentation of itemized vouchers therefor
16 signed by the certifying officer designated by the chief judge.

17 "(d)(1) The Court of Military Appeals may fix a fee, not
18 in excess of the fee charged and collected therefor by the
19 clerks of the United States courts of appeals, for comparing,
20 or for preparing and comparing, a transcript of the record or
21 for copying any record, entry, or other paper and the com-
22 parison and certification thereof. Such fee may not be
23 charged for materials requested by a person subject to this
24 chapter, or by such a person's counsel, with respect to mate-

1 rial requested in connection with any review of a case in
2 which that person is a party.

3 "(2) All fees received by the Court of Military Appeals
4 shall be covered into the Treasury as miscellaneous receipts.

5 "(e) The Court of Military Appeals and the Judge Ad-
6 vocates General shall meet annually to make a comprehen-
7 sive survey of the operation of this chapter and shall report
8 annually to the Committees on Armed Services of the Senate
9 and House of Representatives, and to the Secretary of De-
10 fense, the Secretaries of the military departments, and the
11 Secretary of Transportation, the number and status of pend-
12 ing cases and any recommendations relating to uniformity of
13 policies as to sentences, amendments to this chapter, and any
14 other matters considered appropriate."

15 (2) CLERICAL AMENDMENT.—The table of sub-
16 chapters preceding subchapter I is amended by adding
17 at the end thereof the following new item:

"XII. The United States Court of Military Appeals..... 941 141".

18 (b) TRANSITION PROVISIONS.—

19 (1) CONTINUATION OF STATUS.—The United
20 States Court of Military Appeals established under the
21 amendment made by subsection (a)(1) is a continuation
22 of the United States Court of Military Appeals as it
23 existed before the enactment of this Act. The judges of
24 the United States Court of Military Appeals immedi-

1 ately before the effective date of this Act shall become
2 the judges of the United States Court of Military Ap-
3 peals under section 941 (article 141) of title 10, United
4 States Code, upon the effective date of this Act. No
5 loss of rights or powers, interruption of jurisdiction, or
6 prejudice to matters pending in the United States
7 Court of Military Appeals before the effective date of
8 this Act shall result from enactment of this Act.

9 (2) **TERM OF OFFICE.**—(A) The term of office
10 being served by a judge of the Court of Military Ap-
11 peals on the effective date of this Act shall expire (i)
12 on the date it would have expired under the law in
13 effect on the day before such effective date, or (ii) 10
14 years after the date on which the judge took office as a
15 judge of the Court of Military Appeals, whichever is
16 later.

17 (B) With respect to appointments to vacancies on
18 the Court of Military Appeals that exist on the effec-
19 tive date of this Act, the President shall designate one
20 nominee for such an appointment, at the time of the
21 nomination, for a term of office to expire 12 years after
22 the judge takes office.

23 (C) Any judge of the Court of Military Appeals on
24 the effective date of this Act and any judge appointed
25 under paragraph (2) for a term of 12 years may be

1 reappointed in the same manner as a judge of the
2 Court of Military Appeals appointed under section
3 943(b)(1) (article 143(b)(1)) of such title, as added by
4 subsection (a)(1).

5 (3) EMPLOYEES.—Nothing contained in the
6 amendments made by this Act shall be construed to
7 deprive any individual who on the effective date of this
8 Act is an officer or employee of the United States
9 Court of Military Appeals of any rights, privileges, or
10 civil service status, if any, to which such individual is
11 entitled under the laws of the United States and regu-
12 lations prescribed under such laws.

13 (c) FINANCIAL DISCLOSURE.—Section 308 of the
14 Ethics in Government Act of 1979 is amended—

15 (1) by inserting "Court of Military Appeals;" in
16 paragraph (9) after "Tax Court;"; and

17 (2) by striking out "or of the Tax Court" and in-
18 serting in lieu thereof ", of the Tax Court, or of the
19 Court of Military Appeals".

20 SEC. 4. SUPREME COURT REVIEW.

21 (a) ESTABLISHMENT OF REVIEW BY THE SUPREME
22 COURT OF CASES REVIEWED BY THE COURT OF MILITARY
23 APPEALS.—

(1) IN GENERAL.—Chapter 81 of title 28, United States Code, is amended by adding at the end thereof the following new section:

"§ 1259. Court of Military Appeals; certiorari

"Decisions of the United States Court of Military Appeals may be reviewed by the Supreme Court by writ of certiorari in the following cases:

"(1) Cases reviewed by the Court of Military Appeals under section 867(a)(1) of title 10.

"(2) Cases certified to the Court of Military Appeals by the Judge Advocate General under section 867(a)(2) of title 10.

"(3) Cases in which the Court of Military Appeals granted a petition for review under section 867(a)(3) of title 10.

"(4) Cases, other than those described in paragraphs (1), (2), and (3) of this subsection, in which the Court of Military Appeals granted relief."

(2) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 81 of such title is amended by adding at the end thereof the following new item:

"1259. Court of Military Appeals; certiorari."

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

1 (1) TIME FOR APPLICATION FOR WRIT OF CER-
 2 TIORARI.—Section 2101 of title 28, United States
 3 Code, is amended by adding at the end thereof the fol-
 4 lowing new subsection:

5 “(g) The time for application for a writ of certiorari to
 6 review a decision of the United States Court of Military Ap-
 7 peals shall be as prescribed by rules of the Supreme Court.”.

8 (2) FINALITY OF ACTIONS OF COURTS OF MILI-
 9 TARY REVIEW.—Subsection (e) of section 866 (article
 10 66), relating to the Courts of Military Review, is
 11 amended—

12 (A) by striking out “or”; and

13 (B) by inserting “ or the Supreme Court,”
 14 after “Appeals”.

15 (3) APPELLATE COUNSEL IN APPEALS TO SU-
 16 PREME COURT.—

17 (A) Subsection (b) of section 870 (article 70),
 18 relating to appellate counsel, is amended by
 19 adding at the end thereof the following new sen-
 20 tence: “Appellate Government counsel may repre-
 21 sent the United States before the Supreme Court
 22 in cases arising under this chapter when requested
 23 to do so by the Attorney General.”.

24 (B) Subsection (c) of such section is amended
 25 to read as follows:

1 “(c) Appellate defense counsel shall represent the ac-
2 cused before the Court of Military Review, the Court of Mili-
3 tary Appeals, or the Supreme Court—

4 “(1) when requested by the accused;

5 “(2) when the United States is represented by
6 counsel; or

7 “(3) when the Judge Advocate General has sent
8 the case to the Court of Military Appeals.”.

9 (C) Subsection (d) of such section is amend-
10 ed—

11 (i) by striking out “or” and inserting in
12 lieu thereof a comma; and

13 (ii) by inserting “, or the Supreme
14 Court” after “Review”.

15 **SEC. 5. EFFECTIVE DATE.**

16 The amendments made by this Act shall take effect at
17 the end of the 60-day period beginning on the date of the
18 enactment of this Act.

The CHAIRMAN. Any objection to the approval of the report?

Mr. STRATTON. I wonder, could I ask a question of the chairman of the subcommittee?

You indicate that there is a plan to increase the number of judges from three to five so that retirements, absences, illnesses, or resignations would not impair the ability of the court to function.

Is there a problem now with the court?

Mr. WHITE. Yes; there has been a pretty serious problem, as a matter of fact. Members have gone off the court; they have been appointed to other benches, and so on; so they really haven't been able to function adequately.

Mr. STRATTON. Who has gone off? How many judges do we have there now?

Mr. WHITE. Counsel will have that information.

Mr. WINCUP. Mr. Stratton, during the past 10 years there have been nine different judges on the courts three seats; in one 4-year period there were seven different judges serving in nine different combinations. There has been a rapid turnover among the judges in the court.

Mr. WHITE. There hasn't been any stability, and they have had difficulty getting members on the court.

Mr. STRATTON. Have we had a long record of absences or illnesses?

Mr. BENNETT. It would seem to me that barring any substantial reason, we ought not to increase the number of judges just for the sake of increasing the number of judges. I am sure when this goes to the floor a lot of people are going to say, here we go creating more patronage jobs or more supergrades.

Who is the senior judge on the court now?

Mr. WINCUP. Judge Everett. He was appointed last year; actually this year.

Mr. BENNETT. He is not the senior judge.

Mr. WINCUP. He is not senior in time, but he is the chief.

Mr. BENNETT. Mr. Cook is senior.

Mr. STRATTON. What has the problem been? Obviously, the job is not perhaps as appealing as the U.S. Supreme Court, where you don't have too many resignations or retirements over there. What actual things have impaired the functioning of the court? Who has been sick? Who has been ill, absent?

Mr. WHITE. They have judges leave by appointments to other benches, and they had vacancies for some period of time. I don't have the statistics; maybe counsel does.

Mr. STRATTON. The President nominates somebody to fill the vacancies, doesn't he?

Mr. WHITE. He does.

Mr. STRATTON. You have a lot of unemployed lawyers in Washington. I would think there would be somebody who would be available at a moment's notice to step in.

Mr. WHITE. It has to be confirmed, as I recall.

Mr. STRATTON. Is it the fault of the Senate? I think you ought to really give us a little something substantial to go on.

Mr. WINCUP. Mr. Stratton, prior to Judge Everett's appointment, there was a substantial period where the court functioned with only two members, and whenever there was a disagreement be-

tween the judges on a decision, they couldn't render a decision, and that period was in excess of a year, as I recall.

Mr. STRATTON. Why were there only two judges? Did the President fail to appoint, or did the Senate fail to confirm?

Mr. WINCUP. Well, the previous judge resigned to take a Federal judgeship, and there was a long period during which a search was made to find a successor to him, and then there wasn't any substantial period between the time he was appointed and actually put on the court.

Mr. STRATTON. If it is difficult for the President to find anybody to take the job, creating two more vacancies on the court is simply going to mean it is going to take him twice as long to fill those vacancies.

Mr. WHITE. What you have, numerically, is like having a committee composed of five people. If you had three people, how many people would you be even sure of having at any one meeting? If you had five, you would be assured of having two or three; that is the problem. Also, at that time, I think the term was for the balance of the existing term, when there was a vacancy, and you couldn't attract people to go into the position.

Now, what we are doing is insuring that they have the full 15-year term, so they will be more likely to be willing to accept the appointment.

The CHAIRMAN. Mr. Bailey?

Mr. BAILEY. Thank you, Mr. Chairman. I have one very brief question.

Could somebody, perhaps counsel or Chairman White, expound on the issue of authorizing the Supreme Court's review of a case? I will tell you why that bothers me. I am very distrustful of the recent growth in court power. I would like to give the opportunity to review some of these things, although I am sure I understand the constitutional rights extended to all U.S. citizens. Why, then, would we, on the matters that might affect perhaps our military system, why is appeal or—

Mr. WHITE. In this instance, as I understand, in the past there have been some divergencies from the course of the philosophy of law, and it was felt that they needed some better order in their judgments; they needed to refer to some higher authority to get some direction in some very ticklish and close questions. We need to be able to turn to someone; we don't otherwise have anybody to turn to. They felt this opportunity to get guidance from the Supreme Court by certiorari would be the best procedure.

Mr. BAILEY. With the Court's recent penchant for writing advisory opinions, which they are not supposed to do, I am sure we will get a good, directed, well body of law.

Thank you, Mr. Chairman.

Mr. STRATTON. Could I ask another question? I apologize, but in view of my short but distinguished legal career, I would like to explore another point.

The legislation says that not more than three judges of the court may be appointed from the same political party. As far as I am aware, we have no such stipulation in the law with regard to any other court than this.

I wonder if we are treading on rather delicate grounds. We don't have that for the Supreme Court; we don't have that for the circuit court of appeals; we certainly don't have it for the Federal District bench.

Depending on who is in the White House, most of them get appointed from the same party. But this sounds a little bit like this requirement that I read about in the papers that you shouldn't get nominated to a court unless you take a particular position on abortion. I think we may be setting a bad precedent to suggest that judges are even remotely concerned with political alinement.

Mr. WHITE. As I understand this, a similar provision has been in the law before. Am I correct on that?

Mr. WINCUP. It is presently in the law—no more than two of the three members can be from a single political party.

Mr. WHITE. I was asked by one of the subcommittee members to have this in the present law, continuing this particular provision in the proposed law.

Mr. STRATTON. Well, the provision to have the decisions reviewed by the Supreme Court, does that result from a failure on the part of those appearing before the court that they don't pay any attention to their decisions?

Mr. WHITE. No, I think there was a real diversity in the judges, themselves, in some of the decisions that were advanced, or opinions advanced, and they felt that there was no other way to get at these points, so they could build a body of law that could guide themselves and future judges. They wanted this opportunity for certiorari.

Mr. STRATTON. What we are doing, then, in other words—as I say, I am not on the committee, and I have no real background in this—what we are doing is taking a court which has never been a part of the U.S. judicial system—it has been a part of the military—and we are now making it in the last instance a part of the Federal judicial system.

Mr. WHITE. These decisions, I think, are mostly advisory, are they not? Certiorari would be advisory.

Mr. WINCUP. Well, that would just mean that the Supreme Court would agree to accept the case for judgment. The reason they felt that Supreme Court review was necessary was twofold: in the Government's case, if they got a decision that they felt was bad for military discipline, they had no recourse; they were stuck with decisions they couldn't appeal anywhere.

On the accused side, if there is something that diverts from normal Federal law, he was forced to exhaust all his remedies through the military system and then come all the way through the Federal court systems before he could get a judgment. It has been characterized as inequitable, really, to force the accused to waste a lot of time and money while he is in confinement.

Mr. WHITE. I would like to mention on a writ of certiorari the Supreme Court does not have to accept; they can decline accepting that jurisdiction. So it is strictly within their control.

Mr. STRATTON. The Chief Justice, Mr. Berger, has been explaining that they have too many of these certioraries because everybody wants to go to the Supreme Court, and the gentleman from Texas, who is a distinguished lawyer, will recall the Chief Justice

has proposed setting up a sort of second echelon Supreme Court to handle this kind of stuff; so that the nine old men can devote their attention to other matters.

In other words, we are going to put every single case that goes through this court into the Supreme Court, and that will simply tie their hands.

Mr. WHITE. No; whatever structure the Supreme Court would elect to develop would still have the option of that court whether to accept it. They are advisory, in order to give guidance, so we would have a better quality of decision in the military courts.

Mr. BAILEY. Mr. Chairman, may I ask just one more question? Under the changes that you are making here, the appeal is obviously discretionary, a writ of certiorari, directly to the Supreme Court from the Court of Military Appeals?

Mr. WINCUP. Yes, sir.

Mr. BAILEY. My fear would be perhaps as Mr. Stratton's would be, what we are not going to have is a situation of a collateral movement to the Federal district court, and the writing of military case law in those courts. Under the changes that are made here, that is probably not going to occur.

In other words, you mentioned something about the appeal process. I think most of us would prefer, because we would prefer to have most of that law written in the military system. But aside from whatever writs of habeas corpus they would have, I guess there is no expansion of the removal of cases to the Federal district court to that level?

Mr. WINCUP. Well, what is happening right now is what you suggest; when they appeal to the Federal courts, habeas corpus, they are getting different judgments out of different districts, and the military is trying to have a consistent state of discipline.

Mr. BAILEY. That is my question. This would change that and prevent or at least attempt to slow or stop some of those, the sideward movement of those cases in the Federal court system?

Mr. WINCUP. That is clearly the attempt; yes, sir.

Mr. BAILEY. Thank you, Mr. Chairman.

The CHAIRMAN. Is there objection to filing the report?

The Chair hears none.

Without objection, the report is agreed to.

Mr. White?

[H.R. 8189 is as follows:]

96TH CONGRESS
2D SESSION

H. R. 8189

To amend chapter 55 of title 10, United States Code, to authorize the provision of full dental care benefits to dependents of members of the uniformed services on active duty under the civilian health and medical program of the uniformed services and in facilities of the uniformed services.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 24, 1980

Mr. WHITE (for himself, Mrs. HOLT, Mr. MONTGOMERY, Mr. KAZEN, Mr. WON PAT, Mr. NICHOLS, and Mr. HILLIS) introduced the following bill; which was referred to the Committee on Armed Services

A BILL

To amend chapter 55 of title 10, United States Code, to authorize the provision of full dental care benefits to dependents of members of the uniformed services on active duty under the civilian health and medical program of the uniformed services and in facilities of the uniformed services.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 That section 1077(a) of title 10, United States Code, is
- 4 amended by adding at the end thereof the following new
- 5 clause:

1 “(15) In the case of dependents described in sec-
2 tion 1076(a) of this title, dental care in addition to the
3 dental care authorized by clauses (10), (11), and (12).”.

4 SEC. 2. (a) Chapter 55 of title 10, United States Code,
5 is amended by inserting after section 1079 the following new
6 section:

7 “§ 1079a. Contracts for dental care for spouses and chil-
8 dren: plans

9 “(a) To assure that dental care is available for spouses
10 and children of members of the uniformed services who are
11 on active duty for a period of more than thirty days, the
12 Secretary of Defense, after consulting with the Secretary of
13 Health and Human Services, shall contract, under the au-
14 thority of this section, for outpatient dental care for those
15 persons under such insurance, dental service, or health plans
16 as he considers appropriate. Under joint regulations to be
17 prescribed by the Secretary of Defense and the Secretary of
18 Health and Human Services, the types of dental care author-
19 ized under this section shall be the following:

20 “(1) Emergency treatment and diagnostic and
21 preventive services.

22 “(2) Basic restorative services and prosthetic ap-
23 pliance repairs.

1 “(3) Endodontic, periodontic, and prosthodontic
2 services, oral surgery, and single-cost restorative serv-
3 ices.

4 “(4) Orthodontic services.

5 “(b) Plans covered by subsection (a) shall include provi-
6 sions for payment by the patient as follows:

7 “(1) Payment for the first charges for a family
8 group during any fiscal year for all types of care au-
9 thorized by subsection (a) shall be made as follows:

10 “(A) In the case of the dependents of a
11 member in a pay grade below pay grade E-8,
12 there shall be no payment of such first charges.

13 “(B) In the case of the dependents of a
14 member in pay grade E-8 or E-9, the first \$50
15 of charges shall be paid.

16 “(C) In the case of the dependents of a
17 member in a warrant officer grade, the first \$100
18 of charges shall be paid.

19 “(D) In the case of the dependents of a
20 member in pay grade O-1, O-2, or O-3, the first
21 \$150 of charges shall be paid.

22 “(E) In the case of the dependents of a
23 member in pay grade O-4, O-5, or O-6, the first
24 \$175 of charges shall be paid.

1 “(F) In the case of the dependents of a
2 member in pay grade O-7, O-8, O-9, or O-10,
3 the first \$200 of charges shall be paid.

4 “(2) Payment for charges for a family group
5 during a fiscal year for care authorized by subsection
6 (a) which are in addition to the charges paid for such
7 family group under paragraph (1) shall be made as fol-
8 lows:

9 “(A) For care described in subsection (a)(1),
10 a patient who is a dependent of a member in a
11 pay grade below pay grade E-8 shall pay nothing
12 and a patient who is a dependent of a member in
13 a pay grade above pay grade E-7 shall pay 15
14 per centum.

15 “(B) For care described in subsection (a)(2),
16 a patient who is a dependent of a member in a
17 pay grade below pay grade E-8 shall pay nothing
18 and a patient who is a dependent of a member in
19 a pay grade above pay grade E-7 shall pay 30
20 per centum.

21 “(C) For care described in subsection (a)(3),
22 a patient shall pay 50 per centum.

23 “(D) For care described in subsection (a)(4),
24 a patient who is a dependent of a member in a
25 pay grade below pay grade E-8 shall pay 50 per

1 centum and a patient who is a dependent of a
2 member in a pay grade above pay grade E-7
3 shall pay 75 per centum.

4 "(c) The methods for making payment under subsection
5 (b) shall be prescribed under joint regulations issued by the
6 Secretary of Defense and the Secretary of Health and
7 Human Services."

8 (b) The table of sections at the beginning of such chap-
9 ter is amended by inserting after the item relating to section
10 1079 the following new item:

"1079a. Contracts for dental care for spouses and children: plans."

11 SEC. 3. (a)(1) Section 1080 of title 10, United States
12 Code, is amended—

13 (A) by inserting "(a)" before "A dependent"; and

14 (B) by adding at the end thereof the following
15 new subsection:

16 "(b) A dependent covered by section 1079a of this title
17 may elect to receive dental care in either (1) the facilities of
18 the uniformed services, under the conditions prescribed by
19 sections 1076-1078 of this title, or (2) the facilities provided
20 under a plan contracted for under section 1079a of this
21 title."

22 (2)(A) The heading of such section is amended to read
23 as follows:

1 "§ 1080. Contracts for medical or dental care for spouses
2 and children: election of facilities".

3 (B) The item relating to such section in the table of
4 sections at the beginning of chapter 55 of such title is
5 amended to read as follows:

"Sec. 1080. Contracts for medical or dental care for spouses and children: election
of facilities."

6 (b)(1) Section 1081 of such title is amended by inserting
7 "or 1079a" after "section 1079".

8 (2)(A) The heading of such section is amended to read
9 as follows:

10 "§ 1081. Contracts for medical or dental care for spouses
11 and children: review and adjustments of pay-
12 ments; reports".

13 (B) The item relating to such section in the table of
14 sections at the beginning of chapter 55 of such title is
15 amended to read as follows:

"Sec. 1081. Contracts for medical or dental care for spouses and children: review
and adjustments of payments; reports."

16 (c) Section 1082 of such title is amended by inserting
17 "dental service," in the fourth sentence after "medical
18 service,".

19 SEC. 4. The amendments made by this Act shall apply
20 to dental care provided on or after April 1, 1981.

FACT SHEET ON H.R. 8189 CHAMPUS DENTAL PROPOSAL

The bill provides for dental care for dependents of active-duty military personnel on a cost-sharing basis under the civilian health and medical program of the uniformed services (CHAMPUS).

H.R. 8189 represents a restructuring of the administration's proposal. This dental CHAMPUS proposal consists of two components—a sliding scale annual deductible component and a copayment component as follows:

STRUCTURE

Pay grade	Deductible	Beneficiary copayment by coverage (percent)				
		A ¹	B ²	C ³	D ⁴	E ⁵
E-1 to E-4	\$0	0	0	50	50	50
E-5 to E-7	0	0	0	50	50	50
E-8 to E-9	50	15	30	50	50	75
W-1 to W-4	100	15	30	50	50	75
O-1 to O-3	150	15	30	50	50	75
O-4 to O-6	175	15	30	50	50	75
O-7 to O-10	200	15	30	50	50	75

¹ Coverage A: Emergency treatment, diagnostic and preventive services.

² Coverage B: Basic restorative services and prosthetic appliance repairs.

³ Coverage C: Endodontic, periodontic, oral surgery, and single cost restorative services.

⁴ Coverage D: Prosthodontic services.

⁵ Coverage E: Orthodontic services.

DEFINITIONS OF DENTAL PROCEDURES

Endodontic: Removal of damaged or dysfunctioning nerves from the teeth.

Periodontic: The treatment of bone and soft tissues (gums) associated with the teeth structure.

Prosthodontic: The design and building of full and partial dentures.

Orthodontic: The corrective alinement of teeth.

COST ESTIMATE

Tentative CBO estimate of full year fiscal year 1981 cost is \$189 million; but since the proposed effective date is April 1, 1981, the fiscal year 1981 cost is about \$95 million.

Mr. WHITE. Thank you, Mr. Chairman.

On June 18 of this year, the Military Personnel Subcommittee initiated hearings on the administration's dental proposal under the civilian health and medical program of the uniformed services—CHAMPUS—and received testimony from our colleague, Mr. Bob Wilson, the dental chiefs of the three services, the sergeants, majors and master chiefs from all the services, and finally the president of the American Dental Association.

The administration's proposal, a copy of which has been provided to the members, recommended the establishment of a dental CHAMPUS program for dependents of active duty personnel. The proposal consisted of two provisions. The first provision is an annual deductible which is a sliding scale based on pay grade. The

second provision is a cost-sharing schedule based on five categories of dental care.

During the hearing of June 18, the evidence overwhelmingly suggested, and it was a clear consensus of the members present, that the administration's proposal, while obviously a step in the right direction, does not go far enough in providing for basic dental care.

Specifically, it was felt that because of the out-of-pocket cost required by the deductible and cost-sharing provisions, dependents of many low-ranking enlisted members would be precluded from taking advantage of even the basic dental service.

Therefore, the subcommittee modified the administration's proposal, and on September 15, 1980, reported out a bill which will provide:

Dental care under CHAMPUS which is accessible to dependents of low-ranking as well as high-ranking active duty members, and;

Dental care services at military dental facilities for dependents of active duty members if space and dental staff are available.

The bill which we are considering today would not require enlisted personnel in the pay grades of E-1 through E-7 to pay an annual deductible, nor does it require these enlisted personnel—E-1 through E-7—to make any payments for emergency treatment, diagnostic and preventive services, basic restorative services, or prosthetic services. The bill would require enlisted personnel in grades E-1 through E-7 to cost-share at the 50-percent level for all other dental services. The remainder of the bill is as the administration recommended. It is felt that this bill, once enacted, will assist in:

Encouraging career-minded first-term enlistees to re-enlist;

Improving the retention of mid-level NCO's—E-5 through E-7—and;

Providing dental care to our military dependents which is relatively comparable to the care provided by the private sector.

As I previously indicated, the bill also has a provision which would allow military dental facilities to provide dental services to dependents of active duty personnel on a space-available basis. The current law limits dental care for dependents of active duty personnel to:

Emergency dental care;

Dental care which is adjunct to medical or surgical procedures, and;

Routine dental care for those stationed outside the continental United States or where civilian facilities are not available. As a matter of fact, we discovered in our hearings many people in the services are delaying their dental care until such time as they go overseas, where they could receive full dental attention, and, of course, this means that the dental problems of dependents get worse on overseas tour.

The enactment of this bill will allow full dental care to be provided on a space-available basis for active duty dependents if the dependents elect to use those military dental facilities.

CBO estimated the first-year cost of H.R. 8189 at about \$189 million. However, since the earliest the program could start would be in the March-April 1981 time frame, the effective date is set at

April 1, 1981. This effective date will result in a first-year cost of about \$95 million.

As you know, the perception that military benefits are eroding is pervasive; therefore, we must continue to initiate and promote legislation which will help to change this perception, and, by doing so, add to the "quality of life" for our military families.

The subcommittee members believe that this bill goes an important step beyond the administration's proposal, and I strongly recommend that you support the bill, H.R. 8189, before you, which reflects a technical correction to the bill—H.R. 8143—reported out of the subcommittee.

This technical correction clarifies the language of H.R. 8143 by explicitly stating that dependents have the option to select either dental care under CHAMPUS, or dental care at a military dental facility, subject to the availability of space and dental staff.

Again, I encourage your support of the proposed bill—H.R. 8189.

Mr. LLOYD. That does not pertain to retired personnel, only active duty?

Mr. WHITE. This is active duty dependents.

Mr. LLOYD. Thank you.

Mr. MOLLOHAN. You know, I am very much in sympathy with the subject matter of what you are doing here, and I think it is a step in the right direction, but what is concerning me is this dental-space-available question.

I know that in this Congress, in hearings that we have had before the Compensation Committee, there has been a great deal of emphasis placed on the necessity because of inadequate personnel; it has been necessary to reduce the services that are being made available to our service people—I think something in excess of 400 certain facilities and certain kinds of services—because of the inadequacy of personnel to render the service.

Now, have you, as a committee, made any canvass, either physically or by testimony, of the availability of these services within the framework of the military dental program?

Mr. WHITE. Mr. Mollohan, we didn't make a survey, but we were specifically aware of your concern, and we feel that we have addressed that in both the bill and in the report, and we have language that is going to be placed in the report, directly on the target.

Mr. Campbell, do you have that language?

Mr. CAMPBELL. No, sir.

Mr. WHITE. I will explain what we have in mind. What we are trying to do as to space available, insofar as there was testimony by the military saying that we have dentists who have extra time, not all the time, but they have extra time.

In order to retain these persons in the service, they would like the opportunity, when available, to exercise their dental skills in other areas such as child dentistry.

So we said OK; we are going to say that you can give dental care on a space-available basis, and we are going to allow the person to elect if that space is available. In the report we are going to say, however, that the services shall not expend extra moneys or try to hire extra people on-board in order to provide these space-available

services. Also any space-available services would be provided to dependents of the lowest grades first.

Mr. MOLLOHAN. It seems to me the greatest need is in our lower echelons, in the lower level.

Mr. WHITE. We said that.

Mr. MOLLOHAN. Does our report make some reference to that?

Mr. WHITE. Yes.

Mr. MOLLOHAN. On the lower level of the enlisted?

Mr. WHITE. Yes, sir; not only the bill, itself, but the report language. In the space available we are saying it should be available and in reverse order of rank. In the sliding scale that we are speaking of, we give greater advantages to the lowest ranks going upward so that the deductible is less for the lower ranks than it would be for the upper ranks.

Mr. MOLLOHAN. Less for the lower ranks and upper ranks.

Mr. LLOYD. Would you yield on that? I would like to make one point. Obviously you are not going to change it and nobody is trying to rewrite the recommendations—and I do agree with Mr. Mollohan, and certainly with you; we are headed in the right direction—but I would remind you gentlemen that while it is all neat and tidy to say, and it is very patriotic to say, the lower ranks will be taken care of, I would also remind you, for instance, in the areas of aviation, that the beating that we are currently taking in the loss of personnel, qualified personnel, is so horrendous at the present time, you could probably trade off 10, 15, or 20 people for every one of the aviators that we are losing. Let us not lose sight of the economics of what we are doing.

I do not in any way say that, therefore, you should not give the service to the lower ranks, and indeed we should; I think that is what you are addressing, but I would also remind you that the loss at the present time of qualified aviators in all of the services is at such a horrendous point we will soon reach a point we will not be able to man some of the aircraft that we actually have.

Mr. WHITE. Thank you. We tried to address sliding scale on the basis of economics, but, in fact, we are putting the CHAMPUS for dependents for dental care into law. If the committee so desires, we think it would be an inducement for all grades to stay in the service. This is an additional advantage that will reverse that perception of the erosion of benefits and address a complaint that we have heard from all services. I think dental care has been one of the major complaints.

Mr. LLOYD. Indeed, it has. It has been one of the complaints, by the way, in my dealing, in going around and talking with the aviators and trying to get people to be responsive to the needs of the people in aviation. It is a terrible thing to say, but, very frankly, for every one aviator, I probably could have two or three captains of ships for the cost to the American public, and I am sorry that it comes out that way, that value of a human being is, but we are just not getting the numbers of people going aboard those carriers or flying those aircraft in the other services.

So I am particularly concerned that we are ever mindful that first we have to get the numbers, but along with the numbers we also have to give those who are capable of operating either the aircraft, computers, the avionics, the specialty areas, that are so

important, and I frankly think that in the armed services we have lost track of this. I would hope that in the future, when the gentleman is holding hearings on that, he will afford me the opportunity to speak my mind.

Mr. MOLLOHAN. Would you yield for one more statement? I have no quarrel with what has just been said. In fact, I am very much in sympathy with it. Frankly, I feel much more comfortable here today knowing what I think I know about the scarcity of doctors and dentists in the military service. I would be very much more comfortable if we confined ourselves to a dental CHAMPUS program for dependents of active duty personnel. I would feel much more comfortable about voting for this bill, but I hope in the absence of that limitation, that restriction, that our report would very, very clearly place the emphasis on the accessibility of the CHAMPUS program to dependents of active duty personnel.

Mr. WHITE. That is what this bill is.

Mr. MOLLOHAN. I am certainly in sympathy with what Mr. Lloyd said.

Mr. WHITE. I would refer you to the factsheet before every member. I think you will find it interesting and satisfying.

Mr. BEARD. I concur with the thrust of it. It will be very quick. The fact of the matter is it is going to be a CHAMPUS program, because the fact of the matter is we don't have facilities or capabilities to take care of dependents, so it is going to be CHAMPUS.

My only concern is there is only one thing worse for morale than not having a service, and that is saying you are going to have this service and you are going to have this benefit, and then they go out and if CHAMPUS is handled the same way in the dental area as it is being handled in the medical area, you have got doctors now in many of the military regions that are having nothing to do with CHAMPUS. It is like giving a kid a check that he can't cash, because of the terrible administrative problems, the red tape, the delay in checks to where they have to fight for their money, and I would only hope that while we are saying these beautiful things, that there is a very critical problem in the administrative aspect just in the immediate care. If we add on top of that the dental, I don't know if they can handle it.

Mr. WHITE. We have had problems, and we have corrected a few of those problems, and we are going to continually try to address these problems.

The CHAIRMAN. The Chair is going to recognize Mr. Bob Wilson.

Mr. BOB WILSON. Well, thank you, Mr. Chairman. I just want to support Chairman White in his statement. I think it is very commendable that his subcommittee in this particular year has been very active in correcting some of the inequities in the personnel pay and benefits area. This is a very important one. I would hope the full committee would support the subcommittee's recommendations.

The CHAIRMAN. Mr. Stratton?

Mr. STRATTON. I apologize for finding points to disagree with my colleague from Texas. It is not that I got out of the wrong side of the bed this morning, but I have been out in the real world for the last 2 days, and maybe I am looking at things more from the point of view of a taxpayer.

I think, what Mr. Beard has said, was the point that I wanted to make, is I don't know of any program that has caused more complaints from our service personnel than the CHAMPUS program that now exists, and it seems to me that if we are going to tell people that this will be available, and then it isn't really going to operate any better than the present CHAMPUS program, we are going to create more problems for morale than we are going to relieve.

So, I think—it looks to me as though we are coming out on the eve of the election with a program that everybody is going to hail. We may find that once it gets operating there are going to be an awful lot of disappointed people, and whether it will keep in any aviators or what-have-you, I think the net result, unless we are careful, could be the reverse. And the other thing that bothers me is that it does seem to me that an estimate of \$189 million for a program of this size is really a little bit unrealistic.

Has the Budget Office given us any figures for subsequent years?

Mr. WHITE. Counsel?

Mr. CAMPBELL. Yes, sir, Mr. Stratton. It starts out in fiscal year 1981, \$189 million, and it builds in fiscal year 1985 to approximately \$226 million, and basically the increase is a result of inflationary factors.

Mr. STRATTON. These medical things always go up very steeply, and I think we ought not to kid ourselves that this is going to be cheap.

Mr. WHITE. If the gentleman would yield.

One thought occurred to me, as you were speaking. Now, it appears that servicemen are waiting until they go overseas before they get any dental care, which puts a further drain on the dental services overseas. Under this program they are going to be going to private dentists, those dentists will be paying income tax, so I assume we will be getting back the tax dollars when the dentists pay their income tax the following year.

The CHAIRMAN. The question is on favorably reporting the bill, H.R. 8189. Those in favor will vote aye.

[Chorus of ayes.]

The CHAIRMAN. Those opposed, vote no.

[No response.]

The CHAIRMAN. The ayes appear to have it. The ayes have it, and the bill will be favorably reported.

Mr. WHITE. Mr. Chairman?

The CHAIRMAN. Mr. White.

Mr. WHITE. I would like to have the consent of the committee to bring this bill up on the suspension calendar, at the earliest suspension time, so that we may move these pieces of legislation. I ask unanimous consent to have them placed on the suspension calendar.

The CHAIRMAN. Without objection.

[Whereupon, at 10:45 a.m., the committee proceeded to other business.]

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